

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MICHAEL PIERCE,

Plaintiff,

v.

3:12-cv-565

OFFICER SEALEY and
OFFICER PARNELL,

Defendants.

MEMORANDUM AND ORDER

This *pro se* prisoner's civil rights complaint under 42 U.S.C. § 1983 was filed by inmate Franklin Smith on behalf of inmate Michael Pierce, both of whom were in the Knox County Detention Facility at the time of filing; mail recently sent to Mr. Pierce at that facility was returned undelivered with the notation "no longer at this address." Mr. Smith signed Mr. Pierce's name to the complaint and he also signed an application to proceed *in forma pauperis* on behalf of Mr. Pierce. According to Mr. Smith, Mr. Pierce suffers from brain damage and is disabled.

As Mr. Smith notes, prisoners may receive assistance from fellow inmates in dealing with legal matters, including civil rights actions. *Johnson v. Avery*, 393 U.S. 483, 490 (1968). However, as a threshold requirement for Mr. Smith to have standing to pursue this complaint as a next friend for Mr. Pierce, he must show that Mr. Pierce is unable to litigate

his own cause due to "inaccessibility, mental incompetence, or other disability" and he is "truly dedicated to the best interests" of Mr. Pierce. *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990). "The burden is on the next friend clearly to establish the propriety of his status[.]" *Franklin v. Francis*, 144 F.3d 429, 432 (6th Cir. 1998) (citation and internal quotation marks omitted). Even if the court makes the assumption that Mr. Smith is acting in Mr. Smith's best interest, there is absolutely no evidence, other than Mr. Smith's statement, that Mr. Pierce is incompetent or otherwise incapable of pursuing his own action. Mr. Smith must "demonstrate, not simply assert," Mr. Pierce's incompetence. *West v. Bell*, 242 F.3d 338, 341 (6th Cir. 2001). Thus, Mr. Smith has failed to bear his burden of showing that Mr. Pierce is unable to direct these proceedings on his own behalf.

Based upon the foregoing, the application to proceed *in forma pauperis* on behalf of Mr. Pierce is **DENIED** and this action is **DISMISSED**. All other pending motions are **DENIED** as **MOOT**. The court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. *See* Rule 24 of the Federal Rules of Appellate Procedure.

ENTER:

s/ Thomas W. Phillips
United States District Judge